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LABOUR & EMPLOYMENT DEPARTMENT NOTIFICATION

The 15th March 2007

No. 2438 — li/ 1(S) - 15/2003 - L.E. — In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 21st February 2007 in I. D. Case No. 75 of 2003 of the Presiding Officer, Labour Court, Sambalpur to whom the industrial disputes between the management of M/s Samaleswari Co-operative Milk Producers' Union Ltd., Sambalpur represented by the Administrator-cum- Management Incharge, Samaleswari Regional Co-operative Milk Producers' Union Ltd., At/Post Sakhipara, District Sambalpur/ Unit Incharge Milk Chilling Plant, Industrial Estate, Bargarh, District Bargarh and its workman Shri Paramananda Bag, son of Machindra Bag, C/o Gopal Chandra Sa, At/Post Panichhatar, District Bargarh was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER, LABOUR COURT
SAMBALPUR

INDUSTRIAL DISPUTE CASE No. 75 OF 2003
Dated the 21st February 2007

Present :

Shri P. K. Mahapatro, LL. B.,
Presiding Officer,
Labour Court, Sambalpur.

Between :

The Management of M/s Samaleswari
Co-operative Milk Producers' Union Ltd.,
Sambalpur represented by—

1. The Administrator-cum-Management
Incharge, Samaleswari Regional
Co-operative Milk Producers' Union Ltd.,
At/P.O. Sakhipara,
Dist. Sambalpur.
2. The Unit Incharge, Milk Chilling Plant,
Industrial Estate, Bargarh,
Dist. Bargarh.

And

Its Workman Shri Paramananda Bag,
S/o Machindra Bag,
C/o Gopal Chandra Sa,
At/Post Panichhatar,
Dist. Bargarh.

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Appearances :

For the First Party — Management

Shri P. K. Debta,
Representative of Management

For the Second Party— Workman

Self

AWARD

This case arises out of the reference made by the Government of Orissa, Labour & Employment Department under Sections 10 and 12 of the Industrial Disputes Act, 1947 vide memo No. 12001 (5), dated the 16th December 2003 for adjudication of disputes scheduled below :

"Whether the dismissal of services of Shri Paramananda Bag by the management of M/s Samaleswari Regional Co-operative Milk Producers' Union Ltd., Sambalpur with effect from the 19th November 2001 is legal and/ or justified ? If not, what relief the workman is Shri Bag entitled to ?"

2. The workman named above in order to buttress his claim has filed a statement of claim. In it, he has taken the plea that he was appointed as a Peon-cum-Sweeper from the 1st July 1988 under M/s Samaleswari Regional Co-operative Milk Producers' Union Ltd. (hereinafter referred as 'Milk Union') and then during his tenure of service got promotions and while he was working as Junior Dairyman in Milk Chilling Plant at Bargarh, on the 7th April 2001 Shri Kishore Kumar Nayak who was Incharge of the post of General Manager of the Milk Union called him (workman) to discuss about the complaint lodged against the Bargarh Unit-in-charge and also about the shifting of the machine from Sohela to Padampur and during the course of discussion, the In-charge General Manager being instigated by the Unit-Incharge scolded him in filthy language and both of them pushed him out of the office and in order to harass him lodged a false complaint before the local Police as a result of which he was apprehended by the local Police. It is also the case of the workman that he had also lodged a counter F.I.R. against the Incharge General Manager and the Unit Incharge of Bargarh Milk Union, but nothing was taken up by the local Police, as a result, he filed a complaint case bearing No. ICC 35/2001 which is still *sub judice*. It is also his case that by conducting a perfunctory departmental enquiry, he was removed from service. According to him, the entire illegal activities were conducted by the Incharge General Manager and Unit Incharge to sabotage him and to finish his trade union activities. By mentioning the above facts and circumstances the workman has prayed for reinstatement in service with full back wages. According to him the Departmental proceeding was conducted without observing the principles of natural justice and without giving him an opportunity of being heard.

3. The General Manager in his written statement has taken the plea that the workman was a party to various cases of misappropriation and on different occasions disciplinary actions have been taken against him. It is also the case of the General Manager that on the 7th April 2001 while he was on tour to Bargarh Milk Chilling Plant, the workman committed misconduct, negligence in duty, obstructed the Milk Union Officers while they were discharging their duties and abused them by using vulgar language and by taking note of his such activities the local Police hauled him and then he was placed under suspension and after conducting in a departmental enquiry he was dismissed from service. To sum up it is the stand of the General Manager that the Departmental enquiry was conducted in a fair and proper manner and the allegations that it was conducted in a slipshod manner cannot be easily swallowed. In Para. 7 of the written statement it is admitted by the General Manager that the workman was a union leader, but according to him there is no law which will protect such illegal conduct of the workman. By mentioning the above facts and circumstances the General Manager has prayed for answering the reference against the workman.

4. The workman has filed a rejoinder to the written statement filed by the management. In it, the workman has prayed for deciding the fairness of the domestic enquiry by settling it as a preliminary issue. He has further pleaded that the departmental enquiry was conducted without

affording reasonable opportunity to him and it was taken up by an officer who is very close with the management. It is also averred by the workman that the General Manager of the Milk Union has directly participated in the enquiry as on each day of the enquiry, he was remaining present at the spot, but has not appended any signature on any paper. In his rejoinder the workman has given emphasis to the non-payment of wages for shifting of a machine from Sohela to Padampur. He has also stated that he is a protected workman as, at the relevant time, he was the Secretary of the Trade Union. According to him, by taking note of the fact that he was not given proper opportunity to cross-examine the witnesses during the departmental proceeding and other pleadings the reference he answered in his favour.

5. By taking note of the pleadings of the parties, the following issues are settled in this case —

ISSUES

- (i) "Whether the domestic enquiry conducted by the management of M/s Samaleswari Regional Co-operative Milk Producers' Union Ltd., Sambalpur is fair and proper ?
- (ii) Whether the dismissal of services of Shri Paramananda Bag by the management of M/s Samaleswari Regional Co-operative Milk Producers' Union Ltd., Sambalpur with effect from the 19th November 2001 is legal and justified ?
- (iii) If not, what relief the workman Shri Bag is entitled to ?"

6. During the Course of hearing the workman is only examined from his side, but the management side has examined 7 witnesses. Furthermore Exts. 1 to 9 are marked on behalf of management.

7. With the consent of the parties issue No. (i) was taken up as a preliminary issue and the same was answered against the management vide order, dated the 30th May 2006. As per law, after the above order the management side was allowed to adduce fresh evidence in the Court to substantiate the action taken by them. Accordingly the Incharge General Manager is examined as M. W. 1 and the Driver of the Milk Union is figured as M.W. 2. Dr. Bipin Bihari Pujari a retired C. D. V. O. by claiming that he was present on the relevant day along with the M. W. 1 has given his evidence as M.W.3 and another retired C.D.V.O. by claiming in the same manner like M. W. 3 is examined as M.W. 4. A retired V.A.S. namely, Dr. Prafulla Kumar Padhi is examined as M.W.5 and the Plant Incharge of the Milk Union Shri Dilip Kumar Solanki is examined as M.W.6. The Unit Incharge of Bargarh Milk Chilling Plant is examined as M.W. 7 on behalf of the management. It is now the duty of this Court to legally weigh the evidence addressed from the side of the management in order to arrive in a conclusion as to whether the order of dismissal passed by the management is legally acceptable or not.

FINDINGS

8. *Issue No. (i)* —The fairness of domestic enquiry is already answered against the management. It was held vide order, dated the 30th May 2006 that the domestic enquiry is not fair and proper. So, the other issues are to be answered now.

9. *Issue Nos. (ii) and (iii)* —It is now a well settled law that the defective enquiry cases were to be acquitted with no enquiry cases. In such situations the Labour Court would have jurisdiction to go into the facts and the employer would have to satisfy the Labour Court that on facts the order of dismissal was proper. Furthermore, in such cases the employer would not have the benefit which he had in cases where the domestic enquiries have been held. The entire matter would be open before the Labour Court which will have jurisdiction not only to go into the limited questions open to it where domestic enquiry has been properly held, but also to satisfy itself on the facts adduced before it by the employer whether the dismissal or discharge was justified. In the case at hand it is the specific case of the workman that he was a victim of his trade union activity and on the 7th April 2001 no such incident as propounded by the management took place. In his statement of claim the workman has specifically averred that on that day the General Manager had called him to discuss about the previous complaint lodged against the Unit-Incharge of Bargarh Chilling Plant

and while the discussion was in progress in relation to the payment of labour charges for shifting of machine from Sohela to Padampur, the General Manager scolded him in filthy language being instigated by Unit Incharge. It is also his case in Para. 4 of statement of claim that the General Manager and Unit Incharge pushed him out and lodged a false F.I.R. at the police station. In the written statement vide Para. 3 the General Manager has denied the facts and circumstances narrated in Para. 4 of the statement of claim and has further averred that on 7th April 2001 while he was on tour to Bargarh Chilling Plant the workman committed misconduct, negligence in duty obstructed Officers to discharge their duties and abused the Officers in vulgar language and for his such action the local Police took criminal action against him. In Court, the General Manager has stated that on the 7th April 2001 while he was sitting inside Bargarh Chilling Plant along with Dr. Bipin Bihari Pujari (retired C.D.V.O. of Sambalpur), Dr. Jyoti Ranjan Panda (Retired C.D.V.O., Bargarh), Dr. Prafulla Kumar Padhi (Retired S.D.V.O. and an Officer of Milk Union), Shri Dilip Kumar Solanki, Plant Incharge of the Milk Union and other members of Bargarh Chilling Plant, the workman entered inside his office wherein they were sitting and asked the General Manager as to what happened pertaining to payment of the charges relating to the shifting of the machine from Sohela to Padampur. So the particulars as narrated above are not available in the written statement presented by the management. As per Code of Civil Procedure the pleading must contain all the material facts on which a party relies his claim, but not the evidence by which they are to be proved. So the necessary particulars pertaining to the material facts are to be given in the pleading. So that the adversary will not be at surprise. In Industrial law though pleadings need not be strictly in consonance with the Provision of Code of Civil Procedure, but the rules of natural justice require that the pleading be such so as to give sufficient notice to the other party of the case it is called upon to meet. So in any case pleadings must be definite for laying the foundation of the evidence in the case. If this legal position is kept in view then it is very surprising as to how the memory of the General Manager had failed him to ever in the body of the written statement regarding the particulars what he has stated in his evidence in Court. There is no whisper of word in the written statement regarding the presence of the above referred officers and other details as enumerated in the examination in chief. But there may not be any legal problem to accept such evidence available in his examination-in-chief as because all the detail particulars are available in the charge sheet framed against the workman prior to the holding of the domestic enquiry. Though the domestic enquiry is held to be unfair, but the fact that a charge sheet was submitted against the workman and a copy of the same was handed over to him is not under challenge. So even if the above material particulars are not available in the pleading of the General Manager, but I am of opinion that the workman is not at surprise to the said facts as he had received the copy of the charge sheet wherein all the material particulars available in the evidence are available. As such, these material facts even if not available in the written statement can be judicially noted while deciding the merit of the allegations made against the workman.

10. In Court, the General Manager is examined as M.W.1 and the other star witnesses, namely Dr. B. B. Pujari, Dr. J. R. Panda, Dr. P. K. Padhi and the Unit Incharge of Bargarh Chilling Plant are examined as M. Ws. 3, 4, 5 and 7, respectively. In their evidence in Court they have narrated the incident which took place inside the office room of Bargarh Chilling Plant on the 7th April 2001 evening. The Incharge General Manager in his evidence in Court has stated about the presence of the other witnesses named above and according to him, the entire occurrence took place in their presence. M. Ws. 3, 4, 5 and 7 have also supported the version of the General Manager. The Driver of the Union namely, Shri Duryodhan Sahu has supported the case of the management to the extent that the workman was abusing the General Manager by sitting on the lawn of the Chilling Plant. Though he has not stated about the incident which took place inside the room, but he has stated that the workman had entered inside the room where the General Manager was sitting. According to the workman the General Manager and the Unit Incharge have formed a guild against him. Even if it is accepted for the sake of argument there is no reason for M. Ws. 3, 4 and 5 to support the case of the management in toto. I am giving emphasis the evidence adduced by the M. Ws. 3, 4 and 5.

Their evidence coupled with the supporting evidence of the General Manager, Unit Incharge and the Driver of the Milk Union are sufficient to conclude that the workman on the 7th April 2001 after entering inside the room wherein M. W. 1 was holding discussion committed the overt acts as alleged against him. In my opinion the same is sufficient to start a proceeding against him. Though the workman has taken the plea that he is a victim of his trade union activity, but the same is not to be given importance as his previous conduct is also of that type. Admittedly by them he was the Secretary of the Union. Admittedly at the relevant time there was dispute in between the management and some workers pertaining to the payment of wages for shifting of the machine from Sohela to Padampur. In my opinion the same would have been solved by way of discussion but not by taking the law into the hands. Admittedly a Police case was instituted and a charge sheet was submitted against the workman. The same is congenial to conclude that a statutory body found *prima facie* materials against the workman so far the incident in concerned. In a Industrial dispute a high degree of proof as required in a criminal trial is not necessary. By looking to the evidence adduced by the management witnesses the probability that an incident as stated by the General Manager had happened cannot be ruled out. Though the workman has adduced evidence supporting his case, but in cross-examination he has admitted the previous punishments imposed on him. Furthermore, he has not examined any employee or other staff member of the Plant to disprove the allegations made against him. So after weighing the entire position I am of firm view that the workman has gone out of his way in dealing with the General Manager and other senior Officers on the 7th April 2001 evening and his such action is sufficient to impose punishment on him.

11. Admittedly the management has imposed a major punishment on the workman. Normally the punishment should be imposed by taking note of the degree of misconduct committed by the workman. I am satisfied from the evidence on record that the workman had abused the General Manager and other staff members and even he used words touching the morality of the General Manager. It is also clear from the evidence on record that at the relevant time some senior Officers connected with the Milk Union were present. By looking to the degree of misconduct committed by him, I am satisfied that the punishment of dismissal is justified. There is no reason to interfere with it. So the above issues are answered against the workman. Hence the following Award :—

AWARD

The reference is answered on contest. The dismissal of service of Shri Paramananda Bag by the management of M/s Samaleswari Regional Co-operative Milk Producers' Union Ltd., Sambalpur with effect from the 19th November 2001 is legal and justified and the workman Shri Bag is not entitled to get any relief in this case.

Dictated and corrected by me.

P. K. MAHAPATRO
21-2-2007
Presiding Officer
Labour Court, Sambalpur

P. K. MAHAPATRO
21-2-2007
Presiding Officer
Labour Court, Sambalpur

By order of the Governor

N. C. RAY
Under-Secretary to Government